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Supreme Court of the United States

DOCKET NO. 73-446

SLEGERS-FORBES, INC., a New Jersey Corporation,
and MALCOLM S. FORBES,

Petitioners,

vs.

NEW JERSEY HIGHWAY AUTHORITY,
A Body Politic and Corporate,
GARDEN STATE PARKWAY,
and JOHN B. GALLAGHER, Director,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI AND APPENDIX IN SUPPORT THEREOF

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SUPREME COURT OF THE UNITED STATES

DOCKET No.

SLEGERS-FORBES, Inc., a New Jersey Corporation,
and MALCOLM S. FORBES,
Petitioners,

vs.

NEW JERSEY HIGHWAY AUTHORITY,
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GARDEN STATE PARKWAY,
and JOHN B. GALLAGHER, Director,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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PETITION FOR CERTIORARI

Petitioner prays that a writ of certiorari issue to review the judgments of the Supreme Court of New Jersey and Superior Court of New Jersey, Appellate Division.

OPINIONS BELOW

The decision of the Appellate Division, Superior Court of New Jersey was filed on March 29, 1973 and a Order denying a Petition for Certification for review of the Appellate Division decision was entered on June 13, 1973. The opinion of the Appellate Division, Superior Court of New Jersey is unreported. The denial of certification by the New Jersey Supreme Court is unreported.

JURISDICTION

The judgment of the Superior Court Appellate Division of New Jersey was made and entered on March 29, 1973 and copies thereof are appended to this Petition in the appendix at pages 3 to 5.* An Order of the New Jersey Supreme Court denying a Petition for Certification was entered on June 13, 1973 and a copy is appended to this Petition in the appendix at page 6. The jurisdiction of this Court invoked under 28 U.S.C. 2101(c).

* All references to (Sa –) are to petitioner's Supplemental Appendix in the Superior Court of New Jersey, Appellate Division, which appendix has been certified and filed with this Petition as a part of the record below.

All references to (appendix at p. –) are to Appendix which is appended to this Petition.

QUESTIONS PRESENTED

The Petitioners, Slegers-Forbes, Inc., a New Jersey Corporation and Malcolm S. Forbes, filed a Complaint in lieu of Prerogative Writ seeking a declaratory judgment against the New Jersey Highway Authority and to declare the actions of the said New Jersey Highway Authority in its resolutions of 1961 and 1972 prohibiting motorcycles from using the Garden State Parkway as an arbitrary, capricious, unreasonable act and a denial of due process. The matter was transferred to the New Jersey Superior Court Appellate Division upon motion of the defendant, New Jersey Highway Authority. The New Jersey Superior Court, Appellate Division on the 29th day of March, 1973 found the resolution of the New Jersey Highway Authority banning motorcycles from the Garden State Parkway to be a reasonable exercise of the Highway Authority's power.

A Petition for Certification was filed with the New Jersey Supreme Court and on June 13, 1973 an Order was entered by the New Jersey Supreme Court denying the certification. The questions presented are:

1. Whether the action of the New Jersey Highway Authority prohibiting motorcycles from using the Garden State Parkway is a valid exercise of the police power.

2. Whether the action of the New Jersey Highway Authority prohibiting motorcycles from using the Garden State Parkway is arbitrary, capricious and unreasonable action.

3. Whether the action of the New Jersey Highway Authority violates the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioners' rights under the Fourteenth Amendment of the United States Constitution were denied by the action of the Defendant, New Jersey Highway Authority. The Fourteenth Amendment of the United States Constitution is set forth in the appendix at page 1.

STATEMENT OF THE CASE

Petitioners, Slegers-Forbes, Inc., a New Jersey Corporation and Malcolm S. Forbes, filed a Complaint in lieu of Prerogative Writ seeking a declaratory judgment against the New Jersey Highway Authority and the resolution in 1961 prohibiting motorcycles from using the Garden State Parkway. Malcolm S. Forbes, individually, was denied access to the Garden State Parkway at a toll booth in Bloomfield, New Jersey while riding a motorcycle. The Petitioners first raised the constitutional questions sought to be reviewed in their complaint filed in the New Jersey Superior Court, Law Division (Sa3). The Fourth Count of the Petitioners' Complaint filed in the Law Division of the Superior Court of New Jersey provided "The action of the Defendants is a denial of the state and federal constitutional rights of the Plaintiff to wit: The Fourteenth Amendment of the United States Constitution; Article I, section 8 of the United States Constitution, interference with interstate commerce; Article I, paragraph 1 of the State Constitution, a denial of the natural rights; and Article I, paragraph 5 of the State Constitution in that it denies civil rights"(Sa3). The Defendant, New Jersey Highway Authority filed an answer in the matter and subsequently filed a Notice of Motion for an Order Transferring the action from the Law Division of the Superior Court to the Appellate Division of the Superior Court. While the appeal was pending before the Appellate Division of the New Jersey Superior Court, the New Jersey Highway Authority ordered a supposedly independent investigation to determine whether motorcycles should be banned from the Garden State Parkway. The New Jersey Highway Authority ordered this "new investigation" because it realized its previous resolutions were arbitrary, capricious and unreasonable. The alleged investigation was a report by an

engineering firm Edward and Kelcey, Inc. paid for by the New Jersey Highway Authority. The cover letter of Edward and Kelcey, Inc. stated "We are pleased to present our findings in regard to the continued prohibition of motorcycles on the Garden State Parkway. It is our hope that the report provides the Authority's attorney a useful reference in preparing his defense to the case" (Appendix at p. 2). The alleged investigation was an obvious attempt to buttress a predetermined position. The Petitioners were not given an opportunity for a hearing by the New Jersey Highway Authority or to produce evidence of any type including expert testimony as to the safety of motorcycles nor did they have the opportunity to cross-examine the experts who prepared the reports for the New Jersey Highway Authority. The Appellate Division on the 29th day of March, 1973 found the resolutions of the New Jersey Highway Authority banning motorcycles on the Garden State Parkway to be a reasonable exercise of its power. In its opinion, the Appellate Division stated that the Petitioners charged that the resolution in question was unconstitutional in that it violated the Fourteenth Amendment of the United States Constitution (Appendix at p. 3). However, the Appellate Division did not specifically rule on the constitutional questions raised by the Petitioners. Failure on the part of the Appellate Division to rule on the constitutional questions was raised as reversible error and the Petitioners filed a Petition for Certification in the New Jersey Supreme Court.

REASONS FOR GRANTING THE WRIT

POINT I

The actions of the New Jersey Highway Authority prohibiting motorcycles from using the Garden State Parkway was a denial of due process in violation of the Fourteenth Amendment of the United States Constitution.

Due process is a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. *Trustees of Dartmouth College v. Woodward,* 4 Wheat 518, 4 L.Ed. 629. The fundamental requirements of due process are an opportunity to be heard upon such notice and in such proceedings as are adequate to safeguard the right for which the constitutional protection is invoked. It is an essential element of due process that persons affected be given an opportunity to defend, enforce and protect their rights and that they be afforded ample opportunity to make by evidence and argument a showing to establish the propriety or impropriety from the standpoint of justice and law of the steps, regulations or resolutions asked to be taken. Where the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. Due process implies the right to contradict by proof every material fact.

In *ICC v. Louisville & N. R. Co.*, 227 U.S. 88, 57 L.Ed 431, 33 S. Ct. 185 (1913), the United States Supreme Court said at page 186:

> "Administrative orders, quasi judicial in character, are void if a hearing was denied, if that granted was

> inadequate or manifestly unfair, if the finding was contrary to the indisputable character of evidence . . . or if the facts found do not, as a matter of law support the order made . . ."

The court went on to say at page 187:

> ". . . for manifestly there is no hearing when the party does not know what evidence is offered or considered, and is not given an opportunity to test, explain or refute . . ."

All parties must be fully apprised of the evidence submitted or to be considered, and must be given an opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal.

It has been stated that an administrative order made indisputably contrary to the evidence, or without any evidence, must be deemed to be arbitrary and therefore subject to be set aside. *Louisville & N. R. Co. v. Finn*, 235 U.S. 601, 59 L.Ed 379, 35 S. Ct. 146 (1915); *ICC v. Union P. R. Co.*, 222 U.S. 541, 547, 56 L.Ed. 308, 311, 32 S. Ct. 108 (1912).

The New Jersey Highway Authority's resolution of 1961 banning motorcycles from the Garden State Parkway was clearly arbitrary and unreasonable and the Authority recognized this and ordered a new "investigation" while the appeal was pending before the Appellate Division of the Superior Court of New Jersey. The Petitioners were never given a hearing or an opportunity to present expert testimony while this alleged "investigation" was occurring. The alleged "investigation" was obviously an attempt to buttress an already previously determined position.

The Authority's suggestion that there was a "real opportunity to be heard" when the American Motorcycle

Association was invited in 1961 to appear before the Traffic Safety Committee to deliver a presentation concerning a study on motorcycle safety is not an acceptable substitute to the Constitutional guaranty of due process. An adequate hearing is a matter of right and a hearing granted as a matter of favor or discretion is not a substantial substitute. The requirements of due process are not met where the right of hearing is granted only on conditions so harsh and oppressive as to be tantamount to a denial.

The failure of the Authority to have a hearing either in 1961 or 1972 and allow the Petitioners an opportunity to present expert testimony was truly a denial of due process. The Petitioners and thousands of other motorcyclists are being prevented from driving on a public road without a fair hearing. Motorcyclists have been divested of the legitimate use of their property and the right to use a public road in the same manner and for the same purposes as other motorists without an adequate hearing to present testimony or to test, explain or refute the Authority reports so that the Authority and courts would have a complete record to make a determination whether there was a reasonable basis for the banning of motorcycles.

POINT II

"The actions of the New Jersey Highway Authority in its resolutions of 1961 and 1972 prohibiting motorcycles from using the Garden State Parkway was arbitrary, capricious and unreasonable and was a denial of the equal protection clause of the Fourteenth Amendment to the United States Constitution."

The guaranty of equal protection of the laws requires that all persons shall be treated alike under like circumstances and conditions, both in privileges conferred and

in the liabilities imposed. While the guaranty of like treatment to all similarly situated permits classification, there is an indisputable requirement that the classification be reasonable and not arbitrary and be based upon substantial differences having a reasonable relation to the objects or persons dealt with and the public purpose sought to be achieved. Petitioners submit that the New Jersey Highway Authority has acted in total disregard of this constitutional guaranty.

It is obvious that the Authority is attempting to promote the safety of persons and property using the Garden State Parkway. But the restrictions imposed must be reasonable and not go beyond the public need. A restriction that regulates only a few is arbitrary while the mere classification of persons to diminish an evil is discriminatory. Both of these constitutional criticisms are applicable to the Authority's resolutions.

The question of equal protection is answered or determined on practical considerations based on experience rather than by theoretical inconsistencies. *Patsone v. Commonwealth of Pennsylvania*, 232 U.S. 138, 144, 34 S. Ct. 281, 282, 58 L.Ed. 539 (1914). There is no factual or legal basis to treat motorcycles differently than automobiles in their use of the Garden State Parkway. Both types of vehicles use the road in an ordinary way. The Supreme Court has upheld as valid statutes and regulations that base classification on business or commercial use of roads and highways. See *Railway Express Agency, Inc. et al. v. People of State of New York*, 336 U.S. 106, 69 S. Ct. 463, 93 L.Ed. 533 (1949); *Whitney, et al. v. Johnson, et al.*, 37 F. Supp. 65 (Dist. Ct. E.D. Ky. 1941), *af.* 314 U.S. 574, 86 L.Ed. 465, 69 S. Ct. 117; *Walton, et al. v. City of Atlanta, et al.*, 89 F. Supp. 309 (Dist. Ct. N.D. Ga., 1949), *mod.* 180 F.2d 143, *set aside* 181 F.2d 693, *cert. denied*, 340 U.S. 823, 95 L.Ed. 604, 71 S. Ct. 56.

The Court in *Walton, et al. v. City of Atlanta, et al., supra,* held that the Legislature may not under the guise of the police power impose restrictions that are unnecessary and unreasonable upon the use of private property or pursuit of useful activities. The Court said that the streets belong to the public and are primarily for the use of the public, in an ordinary way, but their use for purposes of gain is special and extraordinary and generally may be prohibited or conditioned as the legislature deems proper.

There was no evidence, testimony, reports, or opinions of either a scientific, mechanical, or engineering nature upon which the Authority could base its conclusion that motorcycles should be banned from the Parkway. The Authority's classification was not valid since it did not rest on material differences or substantial distinctions between motorcycles and automobiles which bear a relation to the safe use of the road. There is no relationship between the Authority's attempt to regulate for the safety of persons or property and banning motorcycles from the road.

In *Turner v. Fouche,* 396 U.S. 346, 24 L.Ed.2d 567, 90 S. Ct. 532 (1970), the United States Supreme Court held that the traditional test is whether the challenged classification rests on grounds wholly irrelevant to the achievement of a valid state objective. Petitioners submit that the Authority's decision to prohibit motorcycles from the Parkway does not fulfill the purpose intended.

In determining the reasonableness of the resolution of 1961 one must look to the evidence before the New Jersey Highway Authority by which it based its conclusion to ban motorcycles from using the Garden State Parkway. The facts are fully set forth in the supplemental appendix page 14a through 30a.

The main document relied on was a memorandum dated October 13, 1960 from Melvin J. Kohn, Traffic Engineer (Sa19-Sa22).

These statistics speak for themselves and Mr. Kohn on page 3 of his report (Sa21) shows that over a period of more than 6 years motorcycle accidents represent 4/10ths of 1% of the total accidents, 72/100ths of 1% of the total injuries and 2.13 per cent of the total fatalities, which he admits is "relatively small."

Mr. Kohn attempts to give a meaning to these statistics in accordance with the obvious desire of Milton Levy, Chairman of the Traffic Safety Committee as expressed in his memorandum dated September 14, 1960 (Sa17) a copy of which went to Traffic Engineer Kohn. A manual count of motorcycles was performed from Tuesday, October 4, 1960 through Monday, October 10, 1960, which count has little meaning as admitted by Mr. Kohn on page 3 (Sa21). Mr. Kohn made his own guess at the total annual volume of motorcycles to be not in excess of 10,000 and he himself admits that even based on his estimate the number of motorcycle accident injuries and fatalities is relatively small but concludes that motorcycles represent a somewhat disproportionate share of accidents (Sa21).

Mr. Kohn goes on to say on page 3 of his report (Sa21):

> ". . . and perhaps the most important in analyzing the desirability of banning motorcycles on the Parkway, is the public acceptance of such a step . . ."

which has no relationship to reasonableness. He then goes on to say that it could be considered the Authority is saving the cyclists from themselves. He then concludes on page 4 of his report (Sa22):

> In conclusion, it appears that the Authority could very well ban motorcycles from the Parkway, assuming the legality is cleared, on the basis of general public acceptance and the fact that motorcycles contribute to a disproportionate share of accidents, injuries and fatalities.

In addition to Mr. Kohn's report there was a letter from Thomas J. West (Sa23) dated October 18, 1960 suggesting that Mr. Kohn's report be sent to Parsons, Brinckerhoff, Quade and Douglas and that their opinion be asked in the matter. This was an obvious step by the General Attorney to buttress his already determined position.

Parsons, Brinckerhoff, Quade and Douglas in their letter of December 29, 1960 (Sa24) wherein they acknowledged the request that they analyze the report by the Authority's Traffic Engineer concerning the use of the Parkway by motorcycles and submit their opinion. In fact they did just that and drew their conclusions right out of Mr. Kohn's report almost word for word without any evidence whatsoever of any additional outside efforts, studies, traffic counts, or comparisons to other limited access highways. In fact there is *nothing* in their report to justify their conclusions. They make a flat statement that a two-wheeled vehicle, is not compatible with the other vehicles using the Parkway, without any reasons or evidence supporting the statement and they conclude as follows (Sa26):

> We recommend, on the basis of the foregoing, that in the interest of safety for both the motorcyclist and the great bulk of Parkway users, serious consideration be given by the Authority to amending the Regulation to prohibit the use of motorcycles on the Parkway.

The next item submitted by the Highway Authority was a memorandum dated December 23, 1960 from the

Traffic Safety Committee (Sa27). The memo recommends a ban with no evidence of findings and determinations and on January 5, 1961 the resolution 1961-10 was adopted in its full text (Sa29, Sa30).

The New Jersey Highway Authority resolution of 1961 banning motorcycles from the Garden State Parkway was clearly arbitrary and unreasonable and the New Jersey Highway Authority recognized this and ordered a new "investigation" while the appeal was pending before the Appellate Division of the Superior Court of New Jersey. The alleged "investigation" was obviously an attempt to buttress an already previously determined position.

Today there is no other high speed toll road, turnpike or expressway in the United States other than the Garden State Parkway that prohibits access of motorcycles.

Michael F. Bondy, an engineer and motorcycle expert in comparing the inherent safety of a motorcycle versus an automobile stated:

> "Perhaps we should touch on the inherent safety of a motorcycle versus an automobile and I have here statistics prepared by The National Safety Council, the 1971 edition of Accident Facts and this information is on page 64 and that is the only date that I know of which compares accident rates for what I would assume are equally-skilled operators for both the automobile and the motorcycle.
>
> I am referring to accident rates of municipal patrol cars versus two-wheel motorcycles operated by the police. The accident rate per million vehicle miles for a three year period from 1967 through 1970 for municipal patrol cars is 34.72, compared with 31.12 for two-wheel motorcycles. I feel that this comparison is very significant. It indicates that if skilled operators use a motorcycle, they can maintain an

> accident rate which is lower than that for an automobile under certain circumstances and in similar environments" (Sa83, 16-25; Sa84, 1-7).

Mr. Bondy testified that the Motorcycle Industry Council as well as the Department of Transportation have improved and continue to improve the safety of motorcycles (Sa83, 7-15).

Liability insurance for motorcycles is now readily available and the premiums have gone down over the years (Sa84, 19-25; Sa85, 1-25; Sa86, 1-19).

The New Jersey Turnpike Authority provided Mr. Bondy with the statistics of motorcycles involved in accidents (Sa36 and Sa37). It is interesting to note that the percent of motorcycles involved compared to the total number of accidents in all cases is less than 1/2 of 1%.

The afore-cited testimony is only part of the record that could have been presented if an actual investigation had been conducted by the New Jersey Highway Authority and if the petitioners had an opportunity to cross-examine the Engineers who prepared the report for Edwards and Kelcey, Inc.

The petitioners and thousands of other motorcyclists are being prevented from driving on a public road without a reasonable basis. There is no reasonable relationship between the prohibition in 1961 and 1972 of motorcycles on the Garden State Parkway and the health, safety and welfare of the public.

The Garden State Parkway is a North-South public toll road connecting the New York Thruway with the southerly tip of the state in Cape May County. This highway affords its users a high speed limited access route to many of the work and recreational areas in this state. The Parkway is used by commuters and travelers to reach

their destinations throughout New Jersey. It is uncontradicted that this highway is a safe means of travel to almost any part of the state since it also connects with and intersects with other east-west and north-south highways and roads. Thus the action of the Highway Authority has prevented thousands of motorcyclists from safe and quick access to jobs and recreation.

By its actions the Authority has summarily prohibited thousands of motorcyclists from using this public road without a fair or adequate hearing. How can this court or any court permit an administrative body to adversely affect the rights of a large segment of the public without the opportunity to present testimony to protect their rights? The answer must be in the negative. This court can not sanction the actions of the Authority. The Authority has blatantly ignored the petitioners' rights and guarantees of equal protection and due process. We can not disregard and dismiss such wilful violations of these Constitutional guarantees even though such actions be under the guise of the police power or an attempt to promote health, safety, and welfare of the public.

The Authority's decision to ban motorcycles from the Parkway was based on statistical analysis and projections without the ability to relate the number of motorcycles using the Parkway. It is submitted that this theory of statistical projection can be applied to other types of motor vehicles and persons so that sports cars, foreign cars and motorists under 25 years of age can also be banned from the road because they have a higher ratio of accidents compared to other classes of motorists. The theory, method, and results are clearly unreasonable.

It is difficult if not impossible to comprehend how one can proceed from the premise that a certain percentage of motorcycles have accidents (which premise can

not be factually proven) to the conclusion that they are unsafe. Assuming that the alleged facts and evidence upon which the Authority bases its conclusion are accurate and true, how can the objective of road safety be fulfilled? If motorcycles are banned from one of New Jersey's safest roads but are then permitted on all other roads then the dangers and hazards are merely increased elsewhere throughout the state and the purported objective, safety, is not satisfied or accomplished. This is merely another indication of the unreasonableness of the Authority's classification and discriminatory actions.

The petitioners do not ask this court to pass upon the credibility of witnesses or conflicts in testimony or weigh evidence in order to determine whether the resolutions are sound or appropriate, but rather the court is petitioned to uphold the Constitutional guarantee of equal protection of the law and due process. In denying or granting this petition the United States Supreme Court will not decide the factual issues of motorcycle safety. But if the court refuses to grant *certiorari* it will lend credence to the Authority's denial of equal protection and due process. The United States Supreme Court can not permit so blatant a disregard of the individual's constitutional rights to continue without a hearing. This Court must enforce these rights which we hold so preciously less other administrative bodies will take the same callous and indifferent approach to these guarantees. The Supreme Court can not permit an administrative weathering away of the Constitutional guarantees. We cannot allow these discriminatory practices and procedures to continue and must give motorcyclists their right to be heard and extend to them the equal protection of the law. Administrative bodies are increasing in number and power in both the state and federal governments. These bodies have enormous potential for doing good or evil in such areas as en-

vironmental protection and conservation of natural resources. The lives of thousands of Americans could be adversely affected if not for the procedural due process safeguards of the United States Constitution. Petitioners respectively request the Court to be cognizant of the ramifications which a denial will have on all individuals similarly situated.

To turn these petitioners away from the benevolent protection of this Court would be tantamount to this Court approving the continued deprivation of the individual's constitutional rights.

It is obvious that the Authority's decision to ban motorcycles was based on preconceived notions and opinions about motorcycles and the people who drive them. The report submitted to the Authority emphasized that a most important factor in banning motorcycles, " . . . is public acceptance of such a step . . ."(Sa21). Petitioners submit that because of changing social customs, application of safety standards and inspections to motorcycles as well as economic conditions including the energy crisis and the need for conserving gas the number of motorcyclists has and will continue to increase dramatically.

Petitioners do not intend to imply in this argument that increasing numbers of motorcycles is the basis upon which to set aside the prohibition. But merely attempt to indicate that this Court has never accepted as the criteria in protecting constitutional guarantees that persons must be a member of the majority, hold popular views or follow a course of conduct accepted by the public. Mere numbers or popular acceptance have no relationship to reasonableness.

Whether or not motorcycles should be banned can only be decided on facts gathered in a fair and adequate hearing.

The Authority's decision can only be upheld if it is reasonable. But without facts gathered at a fair and adequate hearing the Court has no basis to sustain the prohibition.

The Court's primary function is to protect the rights of the individual. We can not tolerate a governmental agency to be so oblivious to the guarantees of due process and equal protection of the laws.

CONCLUSION

For the reasons set forth above it is respectfully submitted that this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

/s/ William E. Ozzard
WILLIAM E. OZZARD
Attorney for the Petitioners

SUPREME COURT OF THE UNITED STATES

DOCKET No.

SLEGERS-FORBES, INC., a New Jersey Corporation,
and MALCOLM S. FORBES,

Petitioners,

vs.

NEW JERSEY HIGHWAY AUTHORITY,
A Body Politic and Corporate,
GARDEN STATE PARKWAY,
and JOHN B. GALLAGHER, Director,

Respondents.

Amendment XIV

§1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Cover Letter from Edwards and Kelcey, Inc. to New Jersey Highway Authority

Mr. John P. Gallagher
Executive Director
New Jersey Highway Authority
Garden State Parkway
Woodbridge, New Jersey 07095

Subject: Motorcycle Operation and Safety—
The Garden State Parkway

Dear Mr. Gallagher:

In response to your request of August 3, 1972 and subsequent Commission approval of August 24, 1972 we are pleased to present our findings in support of the continued prohibition of motorcycles on the Garden State Parkway. It is our hope the report provides the Authority's attorney a useful reference in preparing his defense of the case.

The assistance and direction provided by legal counsel to the Authority, Mr. Kelaher, general counsel Mr. Kravarik and other Authority staff members is gratefully acknowledged.

We appreciated the opportunity to serve the Authority on this interesting assignment.

Very truly yours,

EDWARDS and KELCEY, INC.

/s/ George H. Leland
GEORGE H. LELAND
President

GHL:bam
Encl.

Decision of the Appellate Division,
Superior Court of New Jersey
Dated March 29, 1973
(Filed March 29, 1973)

Submitted: March 12, 1973—Decided: March 29, 1973

Before Judges Fritz, Lynch and Trautwein.

On appeal from the decision of the New Jersey Highway Authority.

Messers. Ozzard, Rizzolo, Klein, Mauro and Savo, attorneys for appellants (Mr. George A. Mauro, Jr. on the brief).

Messers. Hiering, Grasso, Gelzer & Kelaher, attorney for respondent (Mr. Sheldon R. Franklin, attorney).

PER CURIAM

Plaintiffs challenge as arbitrary, capricious and unreasonable a 1961 resolution adopted by defendant New Jersey Highway Authority whereby the use of motorcycles is barred on the Garden State Parkway. They also charge that the resolution is unconstitutional in that it violates the Fourteenth Amendment of the United States Constitution. In any event, say plaintiffs, there is no reasonable relationship today between the prohibition in 1961 of motorcycles on the Parkway, and the health, safety and welfare of the public.

Administrative regulations such as that here involved are endowed with a presumption of validity and unless clearly ultra vires on their face, the person attacking them has the burden of proving otherwise. Cole Nat. Corp. v. State Bd. of Examiners, 57 N.J. 227, 231 (1970). It is well recognized that the Highway Authority has broad powers in the area of traffic flow. McKenna v. N.J. High-

way Authority, 19 N.J. 270, 281 (1955); N.J.S.A. 27:12B-18(g). Though a regulation of motor vehicles, even to the extent of their complete exclusion from particular streets may be considered drastic, a court is not at liberty to substitute its judgment for that of the governing authority where the regulation bears a direct relationship to the public safety and is reasonable and not arbitrary. Garneau v. Eggers, 113 N.J.L. 245 (Sup. Ct. 1934). And we may not substitute our independent judgment for that of an agency such as the Highway Authority where its findings are supported by substantial evidence.

Plaintiffs rely on State v. Ernst, 110 N.J. Super. 520 (Cty. Ct. 1970), where the court held invalid a regulation of the Atlantic City Expressway Authority which prohibited operation of motorcycles on the Expressway. The only evidence in support of the regulation there was a report prepared for the Garden State Parkway concerning prohibition of motorcycles on that highway, and a letter from a State Police Lieutenant assigned to the Expressway. The court found that neither document afforded support for the Expressway regulation. As the court said, the Garden State Parkway report was prepared for a "completely different roadway, with different characteristics and mileage," and the Lieutenant's letter "as a basis upon which to adopt a regulation excluding motorcycles is of doubtful value, considering the fact that it was based on his personal beliefs and observations rather than empirical data." 110 N.J. Super. at 526.

Not so here. The instant regulation was bottomed on reports of the Parkway Traffic Engineer Kohn, the Parkway Operations Manager, and the engineering firm of Parsons, Brinkerhoff, Quade and Douglas. Mr. Kohn concluded that motorcycles caused 40 times their proportionate share of accidents, resulting in 72 times their proportionate share of injuries, and 213 times their pro-

portionate share of deaths. The report by the Parsons firm stated, among other things, that a motorcycle is not suited to cope adequately with bumper-to-bumper, stop-and-go traffic as, for example, encountered on the Parkway in Essex County during rush hours. It concluded: "As the motorcycle, a two-wheeled vehicle, is not compatible with the other vehicles using the Parkway, it is our opinion that increased safety would be attained by a more homogeneous traffic stream from which motorcycles, as a completely different vehicle type, would be eliminated." As a result of these reports and the recommendation of the Traffic Safety Committee, the Authority adopted the subject resolution. Because of the instant challenge to the regulation, the Parkway employed an engineering consultant, Edwards and Kelcey, Inc., to make a current study. In October 1972, that firm filed an extensive report entitled: "Motorcycle Operation and Safety—The Garden State Parkway—October 1972." It concluded that all relevant factors " * * * clearly indicate that the continuance of the prohibition on motorcycle use is in fact both necessary and desirable for the safety of persons and property on the Garden State Parkway." On October 6, 1972, the Highway Authority, relying on the report of Edwards and Kelcey, Inc., adopted a resolution reaffirming the prior resolution excluding motorcycles from the Parkway.

Since there is substantial evidence in the record in support of the reasonableness and viability of the regulation in question, we affirm.

A TRUE COPY

/s/ Mortimer G. Newman, Jr.
Clerk

Order of Supreme Court of New Jersey
(Filed June 13, 1973)

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 13th of June, 1973.

/s/ Florence R. Peskoe
Acting Clerk